

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARTIN AXELROD, conservator of the Estate
of ALAN AXELROD, an incapacitated person,

Plaintiff,

vs.

Civ. No. 98-503 M/WWD

AFTRA HEALTH FUND, and WEST AMERICA
INSURANCE COMPANY, as insurer for
Robert William Heck,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiff's Motion for Default Judgment on Liability and, or in the Alternative, Motion for Sanctions for Defendant AFTRA's Failure to Comply with the Court's Memorandum Opinion and Order of January 12, 1999 (Hereinafter "Motion,"). The Motion was filed February 12, 1999.

The Defendant AFTRA was several days late in complying with a Memorandum Opinion and Order I entered January 12, 1999. The duet of excuses from counsel for non-compliance ranks right up there with "The dog ate my homework." Plaintiff seeks a default judgment which, if granted, would likely be reversed. Since this discovery battle is an ongoing thing, I will defer any recommendation concerning default judgment. Defense counsel will do well to take notice of this since continued delays whether through willful dilatory tactics or continuing ineptitude may well trigger a recommendation for entering a default judgment with an accompanying chronology which will document the Defendant AFTRA's non-performance. For the present I am dealing

solely with the question of sanctions. Plaintiff's counsel shall serve Defendant AFTRA and submit to me, on or before March 5, 1999, an itemized statement of their attorney fees and costs associated with the instant Motion. Defendants shall submit to me and shall serve any response to the aforementioned statement on or before March 15, 1999.

This cause shall proceed in accordance with the foregoing.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE